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July 28, 2020

Mr. Harry McKee  
North American Specialty Insurance Company  
One Kansas City Place  
1200 Main Street, Suite 800  
Kansas City, MO 64105

RE: Principal: CAC-Motir Joint Venture, LLC  
Bond No.: 228-6058  
Project: 47PM1119C0006 Design Build Construction 1800 F Street  
Collocation Project  
Claim No.: 020201440324

Dear Mr. McKee:

Dear Mr. McKee:

I write to respond to the questions raised in your letter dated June 12, 2020.

1. What is the basis for the additional charges, and what documentation of the Agreement for additional work can Plenary provide?

The additional charges are related to extra work beyond the scope of the original Agreement. In July 2019, GSA issued CAC-Motir a Performance, Progress and Manpower Issues – CURE Notice. To resolve the Cure Notice deficiencies, your insured entered a subcontract with Plenary Enterprises to provide on-site professional superintendent, construction management, supervisory, and inspection services. On October 4, 2019, my client received notice from CAC-Motir of debarment and descoping of the Contract by GSA. Notwithstanding that notice, Plenary continued to work directly with and side by side with CAC-Motir to shelter the financial impact and accelerate movement on the project.

As a result of Plenary's efforts, in January 2020, GSA agreed to re-scope the Contract by reinserting all previously removed work areas and new scoped areas. GSA specifically requested Plenary's involvement in all requested changes in the new scope of work as a global settlement of the CURE

Notice and debarment. Plenary subsequently performed all contracted work per the January 2020 re-scoped work under the Contract. Much of this work took place in January and February 2020.

The January and February 2020 invoices and partial payments to Plenary, as outlined in Exhibit C of our Bond Claim, demonstrate that CAC-Motir approved the additional work performed by my clients.

2. Why is Plenary entitled to full payment if their performance shall continue until sixty (60) days after Final Completion and if the project is still ongoing? Plenary would only be entitled to recover against NAS's bond for that portion of time spent on the project performing physical or manual work.

Plenary did not terminate the Contract with CAC-Motir. In March 2020, Plenary met with CAC-Motir to discuss GSA's change in the project scope and CAC-Motir failure to pay Plenary. At that meeting, my client discussed with the CAC-Motir team their dissatisfaction with the lack of payment and offered specific payment terms. At that meeting, CAC-Motir introduced a new company they engaged to augment the team because the re-scoped the Contract now extended the new project completion date to July 2020. Plenary engaged the new management firm through March and April 2020 by giving them details about the project, answering all questions, providing all requested documents. My client sought to ensure the work's integrity was not compromised despite the fact my clients had received no communication from CAC-Motir about an agreed-upon meeting to discuss past payment, and the path forwarded. Plenary is entitled to full payment because they entirely performed under the terms of the Contract.

PE believes NAS's "labor" definition is both narrow and restrictive as applied to the facts of this subcontract. Federal Courts acknowledge that because the Miller Act is remedial, it is entitled to be liberally interpreted. Thus, the Courts have uniformly recognized that the Act covers certain professional supervisory work. Explicitly, in the case of *Butt & Head*, the court agreed that "*skilled professional work which involves actual superintending, supervision, or inspection at the job site...to the extent performed on-site...*" is furnishing labor. A federal court used this same rationale in the case of **Olson v. W.H. Cates Const. Co.** (972 F.2d 987). In that case, Olsen was an on-site supervisory project manager who performed on-site supervisory work and performed some manual labor or might have been called upon to perform such labor.

In this instance, Plenary's employees were directly involved in performing, "skilled professional work which involves actual superintending, supervision, or inspection at the job site...to the extent performed on site..." William Reddick and Barrington Jackson are skilled professional project managers. They were on the job site at least six days a week. Their work involved superintending, supervision, and inspection at the job site. Messrs. Reddick, Jackson, and Anthony Enyinna performed actual labor on the project and were prepared when called upon, to perform manual labor.

As stated in our response to question 1 above, the CAC-Motir subcontract with Plenary was in response to a GSA Cure Notice. In their response to the Cure Notice, CAC-Motir made it clear, at page 2, that the Plenary team of, "*Mr. William Reddick, Mr. Barrington Jackson and Mr. Anthony Enyinna offer construction management, project management and subcontractor capability to energize, activate and propagate every aspect of this contract swiftly and seamlessly across trades and provide labor.*" (See Attachment No. 1)

It is important to note further that the GSA / CAC-Motir Agreement is a sole source set 8(a) set aside

Design-Build and construction services, that specifically included and required contract management and administration resources, at page 8 of 29:

*III.C. Contractor Management and Personnel*

*FAR 52.236-6, Superintendence by the Contractor, is supplemented as follows:*

*(1) The Contractor shall employ sufficient management and contract administration resources, including personnel responsible for project management, field superintendence, change order administration, estimating, coordination, inspection, and quality control, to ensure the proper execution and timely completion of the Work. The Contractor shall designate a principal of the firm or other senior management officials to provide executive oversight and problem resolution resources to the project for the life of the Contract.*

In conclusion, Plenary's provided project management, field supervision, project inspection services, and labor, all of which are recognized as compensable Miller Act professional services by the U.S. Federal Courts.

I trust this is responsive to your query.

Best regards,

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